IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

MFA.No. 50 of 2001()

OPMV.1051/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA
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APPELLANT: APPELLANT

CHRISTUDAS ALIA BABU, S/O JAMES, KODITHOTTATHU MEKKUMKARA PUTHEN VEEDU, THOTTAVARAM, KRUMKODAVILA P.O, THIRUVANANTHAPURAM

BY ADV. SRI.L.MOHANAN

RESPONDENTS: RESPONDENTS
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1. **K.KUTTAPPAN S/O KESAVAN NADAR EKKAMAL MELE BERLIN SADANAM, PERUMKADAVILA MANCHAVILAKOM P.O, NEYYATTINKARA THIRUVANANTHAPURAM(OWNER)**

2. **K.GANGADHARAN, M.G.NIVAS, ELLUVILA HOUSE, ANAVOOR P.O, PERUMKADAVILA THIRUVANANTHAPURAM (DRIVER)**

3. **THE DIVISIONAL MANAGER THE ORIENTAL INSURANCE CO.LTD THIRUVANANTHAPURAM (INSURER)**

BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & M.N.KRISHNAN J.J

M.F.A. No.50 OF 2001

Dated this the 22nd day of January 2007

JUDGMENT

Krishnan.J

This is an appeal preferred against the award of the Motor Accidents Claims Tribunal, Neyyattinkara in O.P.(MV) No.1051/94. The claimant was a cleaner of the lorry bearing Regn No. KLQ9604 sustained injuries when the vehicle was taken on reverse by the driver and it is alleged that the accident took place on account of the negligent driving by the driver. The Tribunal considering the nature of the injury sustained by the claimant awarded a total compensation of Rs. 1,29,400/- and deducted 30% on the ground of contributory negligence. It is against that decision the present appeal is preferred . The point that emerges for determination is mainly on the question of contributory negligence. Admittedly the claimant was a cleaner of the lorry. The lorry was entering into the workshop and as a cleaner, claimant was giving signal to the driver to take reverse of the vehicle. According to the claimant he was standing on the right side of the lorry and was giving directions to the driver to reverse the vehicle and on account of the rash and negligent driving of the lorry by the driver, it hit on him

resulting in injuries. The Tribunal found that he might have stood on the back of the vehicle which had caused the accident and therefore found that he is negligent to the extent 30 percent. It has to be remembered that the driver of the lorry was not examined and no other evidence was also adduced in support of the contention of the Insurance Company regarding the contributory negligence. On the other hand PW1 the claimant who sustained injuries was examined. He had submitted before the Court that the accident took place while he was giving instructions from the right side of the lorry. It was about 10 P.M in the night and certainly he should have also taken better precaution to avert the accident thereby. Since the vehicle was taken to the workshop by reverse and as the width was not adequate the driver should have taken better care. In the absence of any concrete evidence to show that the claimant was standing behind the lorry and giving signals, one cannot hold that he had contributed very much to the accident. But at the same time it has also to be held that had he taken care and precaution and kept a proper distance from the side of the lorry while giving the signals the accident could have been averted. But the major factum of negligence is on the driver who had not even mounted box. Therefore the finding of the Tribunal is modified to the extent by reducing the contributory negligence from 30 percent to 15 percent.

2. So far as the compensation is concerned it is seen that the claimant had sustained very serious injuries and had lost his vision and his optic nerve had been badly affected and the Tribunal fixed the disability at 40% and awarded compensation. So the amount awarded i.e 1,29,400/- is only just and reasonable. When 15 percent of the amount is deducted for the contributory negligence, then the claimant will be entitled to Rs.1,09,990/- instead of Rs. 90,580/- Therefore the claimant will be entitled to an additional amount of Rs. 19,410/- in this case.

3. In the result this M.F.A. is partly allowed and the claimant is entitled to get an additional compensation of Rs.19,410/- with 7% interest on the said sum from the date of petition till realisation. The insurance company is directed to deposit the amount within a period of two months from the date of receipt of a copy of this judgment.

K.S.RADHAKRISHNAN ,JUDGE

M.N.KRISHNAN, JUDGE

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